

HOUSE No. 4076

Message from His Excellency the Governor recommending legislation Relating To Economic Recovery Through Broadband Initiatives In Massachusetts. April 24, 2009.

The Commonwealth of Massachusetts



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April 24, 2009

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal, entitled, "An Act Relating To Economic Recovery Through Broadband Initiatives In Massachusetts."

This is the third in a series of bills intended to ensure that Massachusetts accesses the maximum amount of federal funding available in the economic stimulus bill, the American Recovery and Reinvestment Act ("ARRA") of 2009. This legislative proposal enables the Commonwealth to take full advantage of ARRA funding for broadband deployment initiatives. By passing legislation in 2008 to create the Massachusetts Broadband Institute ("MBI") with the mission of providing affordable and available broadband access statewide, we are well-positioned to reap the benefits of these federal funds.

This bill takes us one step closer to achieving the MBI mission. In sum, this legislation: (1) authorizes the MBI to use its funds to acquire indefeasible rights of uses of fiber facilities and FCC licenses; (2) clarifies that petitions relative to the zoning of a communications or cable facility will be reviewed by DTC and petitions relative to all other types of public service facilities will be reviewed by the DPU; (3) clarifies that the MBI may be exempt from local zoning by-laws or ordinances so long as the MBI is acting within the confines of its essential government functions; and (4) authorizes a transfer of MHD property to the MBI to enable certain broadband initiatives.

It is important that we adopt these proposals immediately, to ensure the state takes every possible action to bring economic recovery home. I urge your early and favorable consideration

of this bill, which will facilitate the implementation of the federal stimulus plan and the Commonwealth's ongoing efforts to provide broadband to all corners of the state.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deval Patrick", with a stylized flourish at the end.

DEVAL L. PATRICK,
Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

AN ACT RELATING TO ECONOMIC RECOVERY THROUGH BROADBAND INITIATIVES IN MASSACHUSETTS.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to access available federal funds and ensure Massachusetts' immediate economic recovery by increasing broadband access and infrastructure, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 6B of chapter 40J of the General Laws, as appearing in section 6 of chapter 231 of the acts of 2008, is hereby amended by inserting in subsection (d) after the words “private-sector entities”, the following words:- ; provided, that for purposes of this section, acquisition of either of the following shall be considered to be acquisition of an ownership interest in broadband infrastructure: (i) an indefeasible right of use of facilities used for the transmission of intelligence by electricity for a period of no less than 20 years, or for such lesser term and subject to such other conditions as the secretary of the executive office of administration and finance may determine to be appropriate to protect the public interest; or (ii) a license or other agreement to use electromagnetic spectrum licensed by the federal government.

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY PUBLIC SERVICE CORPORATIONS

SECTION 2. Section 3 of Chapter 40A of the General Laws, as appearing in the 2006 edition, is hereby amended by striking out the second paragraph, and inserting in place thereof the following paragraph:-

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19 No zoning ordinance or by-law shall regulate or restrict the interior area of a single
20 family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict
21 the use of land or structures for religious purposes or for educational purposes on land owned or
22 leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a
23 religious sect or denomination, or by a nonprofit educational corporation; provided, however,
24 that such land or structures may be subject to reasonable regulations concerning the bulk and
25 height of structures and determining yard sizes, lot area, setbacks, open space, parking and
26 building coverage requirements. Lands or structures used, or to be used by a public service
27 corporation may be exempted in particular respects from the operation of a zoning ordinance or
28 by-law if, upon petition of the corporation, the department of telecommunications and cable or
29 the department of public utilities, after notice given pursuant to section 11 and a public hearing
30 in the town or city, determines the exemptions required and finds that the present or proposed
31 use of the land or structure is reasonably necessary for the convenience or welfare of the public;
32 provided however, that if lands or structures used or to be used by a public service corporation
33 are located in more than 1 municipality such lands or structures may be exempted in particular
34 respects from the operation of any zoning ordinance or by-law if, upon petition of the
35 corporation, the department of telecommunications and cable or the department of public utilities
36 shall after notice to all affected communities and public hearing in 1 of said municipalities,
37 determine the exemptions required and find that the present or proposed use of the land or
38 structure is reasonably necessary for the convenience or welfare of the public. For the purpose
39 of this section the petition of a public service corporation relating to siting of a communications

or cable television facility shall be filed with the department of telecommunications and cable.

All other petitions shall be filed with the department of public utilities.

BROADBAND DEPLOYMENT BY THE COMMONWEALTH AND POLITICAL
SUBDIVISIONS

SECTION 3. Section 6C of chapter 40J of the General Laws, as amended by section 6 of chapter 231 of the acts of 2008, is hereby further amended by adding the following paragraph:-

Notwithstanding any general or special law to the contrary, the corporation may exercise any of its powers to assist or enable the institute to fulfill its purposes as set forth in section 6B, including without limitation the powers set forth in paragraph (e) of section 4, and such purposes are hereby deemed and held to be purposes of the corporation. Without limiting the generality of the foregoing, the corporation shall have the power to develop, operate, lease or otherwise acquire, own, hold, dispose of and encumber conduit, fiber, towers and other real and personal property related to broadband infrastructure that shall be necessary or convenient to the fulfillment of such purposes. The exercise by the corporation of any such powers shall be deemed and held to be an essential governmental function.

MASSACHUSETTS HIGHWAY DIVISION BROADBAND TRANSFER

SECTION 4. Section 6B of chapter 40J of the general laws, as amended by section 6 of chapter 231 of the acts of 2008, is hereby amended by inserting at the end of subsection (d) the following paragraph:-

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64 Notwithstanding any provision of any other law or regulation to the contrary,
65 the corporation on behalf of the institute may accept, and the department of
66 highways is authorized to transfer, lease or license for a term not to exceed 25
67 years to the corporation on behalf of the institute any interest in real property
68 deemed appropriate by the corporation and the commissioner of the department
69 to promote the objectives of this chapter. The nature and extent of such interest
70 shall be transferred on such terms and conditions as the commissioner may
71 determine. Any such interest acquired pursuant to this subsection shall revert to
72 the commonwealth at the expiration of any such term; provided, further, that the
73 terms and conditions under which any interest is to be acquired pursuant to this
74 subsection shall be approved in advance by the secretary for administration, in
75 consultation with the inspector general, and the secretary of transportation.
76 Any such interest acquired by the corporation may be subsequently transferred,
77 leased or licensed thereby for use by public entities or non-profit or for-profit
78 private sector entities subject to the approval of the commissioner of the
79 department of highways and subject to the provisions of this section, including
80 without limitation, such right of reverter at the expiration of the term. The
81 corporation shall transfer, lease or license any such interest using such
82 competitive processes and procedures as may be reviewed and approved by the
83 inspector general. Notice that such interest is available for transfer, lease or
84 license shall be publicly advertised in two daily newspapers of general
85 circulation published in the city of Boston, and, if such real property is located

86 in any other city or town, in a newspaper of general circulation published in
87 such other city or town, once a week for 2 successive weeks. Such
88 advertisements shall state the availability of such interest, the nature of the
89 competitive process and other information deemed relevant, including the time
90 and place where all pertinent information relative to the interest to be
91 transferred, leased or licensed may be obtained, the criteria for selection of a
92 successful proponent, and the time, place and manner for the submission of
93 bids, proposals and the opening thereof. The consideration for any such interest
94 shall be within the estimated range of the fair market value of the interest as
95 determined by the corporation based upon an independent professional
96 appraisal.